

 KENTUCKY CORRECTIONS Policies and Procedures	Policy Number	Total Pages
	28-01-08	6
	Date Filed	Effective Date
	March 12, 2012	May 4, 2012
Authority/References KRS 196.035, 196.285, 197.010, 440.450-440.510, 530.050, 532.110, 532.115, 532.120, 532.210, 532.050 Buford v. Com., 58 S.W. 3d 490, 491 (Ky. App. 2001)	Subject CALCULATION OF CUSTODY TIME CREDIT	

I. DEFINITION

“Custody time credit” means the number of days served in a local jail or intensive secured substance abuse recovery program described in KRS 532.120(6) that are credited toward an offender’s term of imprisonment.

“Department” is defined in KRS 197.010(3).

“Institutional credit” means days spent in the custody of the Department of Corrections.

“Interstate Agreement on Detainers” means an agreement enacted in KRS 440.450.

II. POLICY and PROCEDURE

A. Probation and Parole staff shall apply the following in the calculation of custody time credit for an offender who is held in a jail or other facility:

1. One day of custody time credit shall be credited for each day, or partial day, that the offender is incarcerated. Any day spent in a medical or mental health facility shall be considered in the custody time credit calculations if the offender has a hold or detainer on him for the offense in question. For the time to be included in the calculation, this hold would have to result in the offender’s immediate transfer back to jail upon the offender’s discharge from the medical or mental health facility.
2. Where multiple felony indictments are involved, any applicable credit shall be applied to the indictment which is sentenced first.
3. If the offender is held in custody on other unrelated misdemeanor or felony charges, and is subsequently arrested for a new felony, then custody credit shall be calculated for the dates held in custody on that new felony offense only.

Policy Number	Effective Date	Page
28-01-08	May 4, 2012	2

4. If an offender is serving an imposed felony sentence simultaneously while also held on the felony offense for which the custody time credit is being calculated, probation and parole staff shall not count any custody time credit until the felony sentence has expired, since credit for the time served is calculated as institutional credit.
5. If an offender is being held on a felony offense for which custody time credit is being calculated, and the offender also has a parole violation detainer or parole violation warrant holding the offender, probation and parole staff shall not calculate any custody time credit from the date the detainer was lodged or the warrant was served.
6. If an offender is being sentenced on more than one felony indictment at the same time, custody time credit shall be calculated separately for each indictment. Only periods of time credited to a specific indictment shall be reflected for that indictment. If those felony detainments overlap, one indictment shall receive credit while the other indictment shall have fewer or zero (0) days credit. An explanation of the dates credited shall be included.
7. If an offender is being sentenced on separate felony indictments at the same time, custody time credit shall be submitted separately for each indictment and shall only include credit specific to that indictment.
8. If an offender is being sentenced on separate misdemeanor and felony indictments at the same time, custody time credit shall be submitted separately for each indictment. Since a misdemeanor and felony sentence run concurrently by statute, overlapping credit may be calculated. If needed, an explanation of the overlapping credit days may be included.
9. Custody time credit for treatment programs pursuant to KRS 532.120(6):
 - a. Department approved intensive secured substance abuse recovery program
 - (1) Probation and parole staff shall calculate custody time credit for time spent in a department approved intensive secured substance abuse recovery program under KRS 196.285 if the offender successfully completed the program. The Division of Mental Health shall provide a list of approved intensive secured substance abuse recovery programs.
 - (2) Probation and parole staff shall record attendance in a residential substance abuse treatment or recovery facility prior to sentencing and shall verify the dates attended with the treatment entity.

Policy Number	Effective Date	Page
28-01-08	May 4, 2012	3

- (3) The time spent at the treatment facility and program outcome shall be reported to the court in conjunction with the pre-sentence investigation report.

b. Other residential substance abuse treatment or recovery facility

- (1) Probation and parole staff shall record attendance in a residential substance abuse treatment or recovery facility prior to sentencing and shall verify the dates attended with the treatment entity.
- (2) The time spent at the treatment facility and program outcome shall be reported to the court in conjunction with the pre-sentence investigation report.
- (3) Probation and parole staff shall calculate full or partial program credit as time spent in custody, as determined by the judge at the time of sentencing.

B. Specific Situations

1. If an offender is being held on a pending charge and is also serving an imposed felony sentence, and is subsequently discharged from that felony sentence, custody time credit shall be calculated beginning the day after discharge up to the day before sentencing on the new felony indictment.
2. If an offender serving an imposed felony sentence is transferred to a local jail for trial on a pending charge, custody time credit shall not be calculated because the offender receives institutional credit for another felony sentence.
3. For an offender being resentenced on the same charge, custody time credit shall be calculated as follows:
 - a. If an offender is not released from the custody of the Department to await resentencing, additional custody time credit shall not be calculated because the offender continues to accrue institutional credit while in custody of the department.
 - b. If an offender is discharged from the custody of the Department to await resentencing, custody time credit shall be calculated for any time spent in custody after the date the offender is discharged and up to the day before the offender is resentenced.
4. For an offender serving a federal sentence or sentence for another state who is returned to Kentucky for sentencing pursuant to the Interstate Agreement on Detainers, custody time credit shall not be calculated for time served while in Kentucky custody pursuant to the Interstate

Policy Number	Effective Date	Page
28-01-08	May 4, 2012	4

Agreement on Detainers because this time is credited to the federal sentence or the sentence of the other state.

5. For an offender who completes a sentence in another state and is returned to Kentucky to begin serving a sentence for Kentucky, custody time credit shall be calculated beginning the day after discharge up to the day before sentencing on the new Kentucky felony indictment regardless of the offender's location.
6. Time spent in custody as a result of an unrelated charge (felony or misdemeanor) that is later dismissed shall not be calculated unless the offender was also being held on the current felony during the pendency of that charge.
7. If an offender apprehended in another state on a Kentucky warrant only, custody time credit shall be calculated beginning on the date of arrest in the other state and up to the day before sentencing, regardless of location.
8. If an offender has escaped from the Department and who is apprehended in another state on the Kentucky warrant only, custody time credit shall be calculated beginning on the date of arrest in the other state and up to the day before return to a Kentucky facility. Institutional credit shall begin to accrue on the first day the offender is lodged in a Kentucky facility, either a jail or prison.
9. If an offender is apprehended in another state on a Kentucky warrant and also has charges stemming from an arrest in another state, then custody time credit shall be calculated as follows:
 - a. When the offender is subsequently convicted on the other state's charges, custody time credit shall be calculated beginning on the date the offender completes service on the new local sentence.
 - b. When the other state's charges are dismissed, custody time credit shall be calculated from the date the Kentucky warrant is served.

C. Calculating Custody Time Credit Pursuant to Revocation

1. Probation Revocation

All days in custody related to the indictment for which probation is being revoked up to the date of the revocation shall be calculated, including days before sentencing, time in custody pending a revocation hearing, and time in custody as a condition of the probation or in lieu of a revocation.

2. Revoked Shock Probation

Policy Number	Effective Date	Page
28-01-08	May 4, 2012	5

Probation and parole staff shall calculate time in custody related to the indictment for which shock probation is being granted after the shock probation was granted. Custody credit prior to sentencing shall not be calculated, since this would be a duplication of time credited by other Department staff.

3. Parole Violation

Probation and parole staff shall not calculate custody time credit for parole violations, since time spent in custody from the date of arrest on the parole violation warrant or detainer is institutional credit calculated by other Department staff.

4. Home Incarceration

Time spent on home incarceration as part of the sentence after sentencing shall be calculated as custody time credit. Time spent on home incarceration as a form of pre-trial release shall not be calculated as custody time credit.

D. Administrative Remedy for Jail Custody Time Credit

1. Review Request

- a. An offender may request in writing a review of the calculation of custody time credit applied to his sentence or a review or explanation of the method used to calculate custody time credit for the sentences on which he is presently committed to the Department.
- b. To request a review, the offender shall mail the request to the Probation and Parole Office in the county in which the inmate was sentenced.
- c. The offender request shall include:
 - (1) The subject matter for which the review is requested,
 - (2) A brief statement of the matter to be reviewed, and
 - (3) An explanation of the inmate's belief concerning the appropriate calculation of custody time credit.

2. Response

- a. The District Supervisor, or designee, shall review the request and prepare a written response. Upon receipt of the written request

Policy Number	Effective Date	Page
28-01-08	May 4, 2012	6

from the inmate, the District Supervisor, or designee, shall review the offender's record prior to giving a response.

- (1) The response shall include an explanation of the method of calculation of jail custody time credit, and
- (2) Whether or not the correct custody time credit has been applied to the sentence.

- b. A written response shall be issued within fifteen (15) working days of the receipt of the offender's request for review or explanation.
- c. The written response shall be entered in the offender management system.

3. Appeal

- a. An inmate may appeal the written response concerning custody time credit to the Offender Information Services Branch, Attention: Custody Time Credit Appeal, PO Box 2400, Frankfort, KY 40602-2400.
- b. The appeal response shall include:
 - (1) An explanation of the method of calculation and application, and
 - (2) Any statutes applied in the calculation.
- c. The response on this appeal shall be issued within thirty (30) working days of the receipt of the offender's request for review.